IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 68 OF 1999.

State of Goa,
Represented by Director
of Land Survey,
Directorate of Land Survey,
Panaji, Goa. .... Appellants.

Versus

Roque Francisco Rodrigues,
(since deceased),
now represented by his L.Rs.

(a) Purificacao Rodrigues,
widow, r/o Sanguem, Goa.

(b) Ramona Rodrigues e Dias,
daughter and her husband,

© Bonny Dias,
both r/o of Cansaulim.

(d)Miss Sarafina Rodrigues,
daughter.

(e) Miss Ethelvina Rodrigues,
daughter, both resident of
Sanguem, Goa.

(f) Mrs. Apolonia Rodrigues,
daughter and her husband.

(g) Mr. Filipe Rodrigues,
both r/o Mandopa, Navelim.

(h) Miss Maria Rodrigues,
daughter.

(i)Mr. Eudes Rodrigues (Son).

(j) Mr. Neofetio Rodrigues,
(Son), all r/o Sanguem,
Goa. .... Respondents.

Shri H.R. Bharne, Government Advocate for the Appellant.

Respondents absent though served.

CORAM: R. M. LODHA, J.

DATE: 21st OCTOBER, 2005.

ORAL JUDGMENT:

This First Appeal is directed against the Judgment and Award dated 4th January, 1999 passed by the Addl. District and Sessions Judge, South Goa at Margao in Land Acquisition Case No.199/89 arising out of reference under Section 30 of the Land Acquisition Act, 1894.

2. The Notification under Section 4(1) of the Land Acquisition Act, 1894 proposing acquisition of an area of 350 sq.metres from Survey No.2/5 of village Dharbandora along with other land for extension of National Highway 4A Panaji-Belgaum road was published in Government Gazette on 23.09.1986. The Land Acquisition Officer in its Award dated 4.01.1999 concerning the aforesaid land observed that from the material placed before him it appears that the Government of Goa, Daman and Diu was the occupant and Roque Francisco Rodrigues had other rights. He referred the matter to the District Court for adjudication of the claim under S.30 of the

Land Acquisition Act, 1894. In the proceedings under S.30 of the Land Acquisition Act, the claimant examined Eudes Rodrigues (AW1). He produced the licence obtained from Sanguem MunicipalCouncil for extension of the house and also the application made by the original claimant (his father) for the grant of land. Both these documents were marked as Exh.AW1/A and AW1/B.

3. On behalf of the State Government, Ashok Naujekar (RW.1) was examined. Inter alia he produced new Survey plan (RW.1/C), Index of Land – Form III (Exh.RW.1/D), Index of Land Form I and XIV (RW.1/E) and the plan showing the acquired portion (Exh.RW1/F).

4. The Reference Court after hearing the parties and on the basis of the evidence on record held that the claimant was entitled to compensation in respect of 63 sq.m. where his house was situate and the State Government was entitled to the compensation with regard to an area of 287 sq.m. To complete the narration of facts, it may be noticed here that for the acquisition of the entire area of 350 sq.m. from Survey No.2/5 of village Dharbandora the Land Acquisition Officer determined the compensation at Rs.3751/-. In other words as per the Reference Court the claimant shall be entitled to about Rs.750/- and the State Government was entitled to about Rs.3000/-.

5. The State Government would have been well advised if First Appeal like this was not preferred By filing this First Appeal, they had spent on litigation, more than they were required to pay to the claimant as per the award of the Reference Court. Even if there was some dispute, by paying Rs.750/- to the claimants, the State Government would have saved more money than they have spent on litigation. The fact that such appeal came to be filed by the State Government shows that proper legal advice is not given by the Government Advocate/s and the Law Department also deals with the matters casually. Else such an appeal would not have been filed. The First Appeal does not give rise to any question of law. The question relates to grant of compensation for acquisition of 63 sq. metres of land. The compensation that is payable under the award of the Reference Court to the claimant is hardly Rs.750/-. This First Appeal is classic example of non-application of mind by the concerned authorities in filing appeal in the matter of inconsequential nature.

6. Insofar as the merits of the case is concerned, suffice it to say that the evidence led on behalf of the claimants clearly shows that right from the year 1959 the claimant is in possession and enjoyment of the acquired property. The acquired land had a house which was built by the claimant. The possession of the claimant is reflected from the Revenue Record itself.

That on the acquired land there is house of the claimant is not even disputed by the witness produced by the State Government. Though the claimant sought compensation for the entire land admeasuring 350 sq.m. but since he failed to show his ownership, the compensation for the entire acquired land admeasuring 350 sq.m. was not granted by the Reference Court. Since from the evidence on record it was clear that the house standing on the acquired land was constructed by him, to the extent it was acquired, compensation in respect of an area of 63 sq.m. has been awarded. As already indicated above, as per the award of the Reference Court, the claimant/respondent is only entitled to compensation in respect of an area of 63 sq.m. which approximately comes to Rs.750/-.

7. The First Appeal is wholly frivolous and it is dismissed. I thought of awarding costs, but since the respondents have chosen not to appear, no order as to costs.

R. M. LODHA, J.

sl.